

THE HONORABLE RICHARD A. JONES  
(On Reference to the Hon. Michelle L. Peterson)

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

INTEGRATIVE HEALTH INSTITUTE  
PLLC d/b/a SOPHIA HEALTH  
INSITUTUTE, a Washington Professional  
Limited Liability Company, SOPHIA  
NUTRITION, LLC, a Washington Limited  
Liability Company; SOPHIA EDUCATION,  
LLC, a Washington Limited Liability  
Company; KS DISTRIBUTORS LLC, a  
Washington Limited Liability Company;  
DIETRICH KLINGHARDT,  
an individual,

Plaintiffs,

vs.

CHRISTINE SCHAFFNER and DANIEL  
SCHAFFNER, as individuals and the marital  
community thereof; BELLA FIORE KLINIK,  
PLLC, a Washington Professional Limited  
Liability Company; BELLA FIORE  
ORGANIC SKIN CARE, LLC, a Washington  
Limited Liability Company; BELLA FIORE  
ORGANICS, LLC, a Washington Limited  
Liability Company; LUMVI SKINCARE,  
LLC, a Washington Limited Liability  
Company,

Defendants.

No.: C20-1471-RAJ-MLP

STIPULATED AGREEMENT REGARDING  
DISCOVERY OF ELECTRONICALLY  
STORED INFORMATION AND ORDER

The parties hereby stipulate to the following provisions regarding the discovery of  
electronically stored information (“ESI”) in this matter:

STIPULATED AGREEMENT REGARDING DISCOVERY OF  
ELECTRONICALLY STORED INFORMATION AND ORDER  
NO.: C20-1471-RAJ-MLP

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1 **A. General Principles**

2 1. An attorney's zealous representation of a client is not compromised by conducting  
3 discovery in a cooperative manner. The failure of counsel or the parties to litigation to cooperate  
4 in facilitating and reasonably limiting discovery requests and responses raises litigation costs and  
5 contributes to the risk of sanctions.

6 As provided in LCR 26(f), the proportionality standard set forth in Fed. R. Civ. P.  
7 26(b)(1) must be applied in each case when formulating a discovery plan. To further the  
8 application of the proportionality standard in discovery, requests for production of ESI and  
9 related responses should be reasonably targeted, clear, and as specific as possible.

10 **B. ESI Disclosures**

11 Within 10 days of entry of this Order, or at a later time, if agreed to by the parties, each  
12 party shall disclose:

13 1. Custodians. The three to five primary custodian(s) most likely to have  
14 discoverable ESI in their possession, custody, or control. The custodians shall be identified by  
15 name, title, connection to the instant litigation, and the type of the information under the  
16 custodian's control.

17 2. Non-custodial Data Sources. A list of non-custodial data sources (e.g., shared  
18 drives, servers), if any, likely to contain discoverable ESI.

19 3. Third-Party Data Sources. A list of third-party data sources, if any, likely to  
20 contain discoverable ESI (e.g., third-party email providers, mobile device providers, cloud  
21 storage) and, for each such source, the extent to which a party is (or is not) able to preserve  
22 information stored in the third-party data source.

23 4. Inaccessible Data. A list of data sources, if any, likely to contain discoverable ESI  
24 (by type, date, custodian, electronic system or other criteria sufficient to specifically identify the  
25 data source) that a party asserts is not reasonably accessible under Fed. R. Civ. P. 26(b)(2)(B).

1           5.     Foreign data privacy laws. Nothing in this Order is intended to prevent either  
2 party from complying with the requirements of a foreign country's data privacy laws, e.g., the  
3 European Union's General Data Protection Regulation (GDPR) (EU) 2016/679. The parties  
4 agree to meet and confer before including custodians or data sources subject to such laws in any  
5 ESI or other discovery request.

6     **C.     ESI Discovery Procedures**

7           6.     On-site inspection of electronic media. Such an inspection shall not be required  
8 absent a demonstration by the requesting party of specific need and good cause or by agreement  
9 of the parties.

10          7.     The parties shall timely confer to attempt to reach agreement on appropriate  
11 search terms and queries, file type and date restrictions, data sources (including custodians), and  
12 other appropriate computer- or technology-aided methodologies, before any such effort is  
13 undertaken. The parties shall continue to cooperate in revising the appropriateness of the search  
14 methodology.

15               a.     Prior to running searches:

16                   i.    The producing party shall disclose the data sources (including  
17 custodians), search terms and queries, any file type and date restrictions, and any other  
18 methodology that it proposes to use to locate ESI likely to contain responsive and discoverable  
19 information within 7 days of the "meet and confer" identified in Section (a)(iv) of the ESI. The  
20 producing party may provide unique hit counts for each search query.

21                   ii.   The requesting party is entitled to, within 7 days of the producing party's  
22 disclosure, add no more than 10 search terms or queries to those disclosed by the producing party  
23 absent a showing of good cause or agreement of the parties.

24                   iii.   The following provisions apply to search terms / queries of the  
25 requesting party. Focused terms and queries should be employed; broad terms or queries, such

1 as product and company names, generally should be avoided. A conjunctive combination of  
2 multiple words or phrases (e.g., “computer” and “system”) narrows the search and shall count as  
3 a single search term. A disjunctive combination of multiple words or phrases (e.g., “computer”  
4 or “system”) broadens the search, and thus each word or phrase shall count as a separate search  
5 term unless they are variants of the same word. The producing party may identify each search  
6 term or query returning overbroad results demonstrating the overbroad results and a counter  
7 proposal correcting the overbroad search or query. A search that returns more than 400 unique  
8 documents, excluding families, is presumed to be overbroad.

9                   iv. To the extent additional discovery is propounded by Plaintiffs and  
10 Defendants, the parties will meet and confer within 7 days of email service to discuss the  
11 anticipated document responses, including whether additional search terms will be necessary.

12                   b. After production: Within 21 days of the producing party notifying the  
13 receiving party that it has substantially completed the production of documents responsive to a  
14 request, the responding party may request no more than 10 additional search terms or queries.  
15 The immediately preceding section (Section C(2)(a)(iii)) applies.

16                   c. Upon reasonable request, a party shall disclose information relating to  
17 network design, the types of databases, database dictionaries, the access control list and security  
18 access logs and rights of individuals to access the system and specific files and applications, the  
19 ESI document retention policy, organizational chart for information systems personnel, or the  
20 backup and systems recovery routines, including, but not limited to, tape rotation and  
21 destruction/overwrite policy.

22                   d. For the discovery requests that are the subject of January 26, 2022 Order -  
23 DCKT No. 140 (2b,2h,2f, and 2l), Defendants have been producing documents based on search  
24 terms. It is Defendants’ goal to complete these productions by April 1, 2021.

1           8.     Format.

2           a.     ESI will be produced to the requesting party with searchable text, in a format  
3 to be decided between the parties. Acceptable formats include, but are not limited to, native files,  
4 multi-page TIFFs (with a companion OCR or extracted text file), single-page TIFFs (only with  
5 load files for e-discovery software that includes metadata fields identifying natural document  
6 breaks and also includes companion OCR and/or extracted text files), and searchable PDF.

7           b.     Unless otherwise agreed to by the parties, files that are not easily converted  
8 to image format, such as spreadsheet, database, and drawing files, will be produced in native  
9 format.

10          c.     Each document image file shall be named with a unique number (Bates  
11 Number). File names should not be more than twenty characters long or contain spaces. When a  
12 text-searchable image file is produced, the producing party must preserve the integrity of the  
13 underlying ESI, i.e., the original formatting, the metadata (as noted below) and, where  
14 applicable, the revision history.

15          d.     If a document is more than one page, the unitization of the document and any  
16 attachments and/or affixed notes shall be maintained as they existed in the original document.

17          e.     The parties shall produce their information in the following format: single-  
18 page images and associated multi-page text files containing extracted text or with appropriate  
19 software load files containing all information required by the litigation support system used by  
20 the receiving party.

21          9.     De-duplication. The parties may de-duplicate their ESI production across  
22 custodial and non-custodial data sources after disclosure to the requesting party, and the  
23 duplicate custodian information removed during the de-duplication process tracked in a  
24 duplicate/other custodian field in the database load file.

1           10.    Email Threading. The parties may use analytics technology to identify email  
2 threads and need only produce the unique most inclusive copy and related family members and  
3 may exclude lesser inclusive copies. Upon reasonable request, the producing party will produce  
4 a less inclusive copy.

5           11.    Metadata fields. If the requesting party seeks metadata, the parties agree that only  
6 the following metadata fields need be produced, and only to the extent it is reasonably accessible  
7 and non-privileged: document type; custodian and duplicate custodians (or storage location if no  
8 custodian); author/from; recipient/to, cc and bcc; title/subject; email subject; file name; file size;  
9 file extension; original file path; date and time created, sent, modified and/or received; and hash  
10 value. The list of metadata type is intended to be flexible and may be changed by agreement of  
11 the parties, particularly in light of advances and changes in technology, vendor, and business  
12 practices.

13           12.    Hard-Copy Documents. If the parties elect to produce hard-copy documents in an  
14 electronic format, the production of hard-copy documents will include a cross-reference file that  
15 indicates document breaks and sets forth the custodian or custodian/location associated with each  
16 produced document. Hard-copy documents will be scanned using Optical Character Recognition  
17 technology and searchable ASCII text files will be produced (or Unicode text format if the text is  
18 in a foreign language), unless the producing party can show that the cost would outweigh the  
19 usefulness of scanning (for example, when the condition of the paper is not conducive to  
20 scanning and will not result in accurate or reasonably useable/searchable ESI). Each file will be  
21 named with a unique Bates Number (e.g., the unique Bates Number of the first page of the  
22 corresponding production version of the document followed by its file extension).

23 **D.    Preservation of ESI**

24           The parties acknowledge that they have a common law obligation, as expressed in  
25 Fed. R. Civ. P. 37(e), to take reasonable and proportional steps to preserve discoverable

1 information in the party's possession, custody, or control. With respect to preservation of ESI,  
2 the parties agree as follows:

3 13. Absent a showing of good cause by the requesting party, the parties shall not be  
4 required to modify the procedures used by them in the ordinary course of business to back-up  
5 and archive data; provided, however, that the parties shall preserve all discoverable ESI in their  
6 possession, custody, or control.

7 14. The parties will supplement their disclosures in accordance with Fed. R. Civ. P.  
8 26(e) with discoverable ESI responsive to a particular discovery request or mandatory disclosure  
9 where that data is created after a disclosure or response is made (unless excluded under Sections  
10 (D)(3) or (E)(1)-(2)).

11 15. Absent a showing of good cause by the requesting party, the following categories  
12 of ESI need not be preserved:

- 13 a. Deleted, slack, fragmented, or other data only accessible by forensics.
- 14 b. Random access memory (RAM), temporary files, or other ephemeral data that  
15 are difficult to preserve without disabling the operating system.
- 16 c. On-line access data such as temporary internet files, history, cache, cookies,  
17 and the like.
- 18 d. Data in metadata fields that are frequently updated automatically, such as last-  
19 opened dates (see also Section (E)(5)).
- 20 e. Back-up data that are duplicative of data that are more accessible elsewhere.
- 21 f. Server, system or network logs.
- 22 g. Data remaining from systems no longer in use that is unintelligible on the  
23 systems in use.
- 24 h. Electronic data (e.g., email, calendars, contact data, and notes) sent to or from  
25 mobile devices (e.g., iPhone, iPad, Android devices), provided that a copy of all such electronic

1 data is automatically saved in real time elsewhere (such as on a server, laptop, desktop computer,  
2 or “cloud” storage).

3 **E. Privilege**

4 16. A producing party shall create a privilege log of all documents fully withheld  
5 from production on the basis of a privilege or protection, unless otherwise agreed or excepted by  
6 this Agreement and Order. Privilege logs shall include a unique identification number for each  
7 document and the basis for the claim (attorney-client privileged or work-product protection). For  
8 ESI, the privilege log may be generated using available metadata, including author/recipient or  
9 to/from/cc/bcc names; the subject matter or title; and date created. Should the available metadata  
10 provide insufficient information for the purpose of evaluating the privilege claim asserted, the  
11 producing party shall include such additional information as required by the Federal Rules of  
12 Civil Procedure. Privilege logs will be produced to all other parties no later than 30 days after  
13 delivering a production unless an earlier deadline is agreed to by the parties.

14 17. Redactions need not be logged so long as the basis for the redaction is clear on  
15 the redacted document.

16 18. With respect to privileged or work-product information generated after the filing  
17 of the complaint, parties are not required to include any such information in privilege logs.

18 19. Activities undertaken in compliance with the duty to preserve information are  
19 protected from disclosure and discovery under Fed. R. Civ. P. 26(b)(3)(A) and (B).

20 20. Pursuant to Fed. R. Evid. 502(d), the production of any documents in this  
21 proceeding shall not, for the purposes of this proceeding or any other federal or state  
22 proceeding, constitute a waiver by the producing party of any privilege applicable to those  
23 documents, including the attorney-client privilege, attorney work-product protection, or any  
24 other privilege or protection recognized by law. Information produced in discovery that is  
25



protected as privileged or work product shall be immediately returned to the producing party,  
and its production shall not constitute a waiver of such protection.

DATED: April 1, 2022

OSERAN HAHN, P.S.

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### ORDER

Based on the foregoing, IT IS SO ORDERED.

DATED: April 1, 2022



MICHELLE L. PETERSON  
United States Magistrate Judge